

Appl. No. 10/725,251
Docket No. P146
Amdt. dated March 31, 2010
Reply to Office Action mailed on January 4, 2010
Customer No. 27752

REMARKS

Claim Status

Claims 1-3 and 6-20 are pending in the present application. Claims 4 and 5 were previously canceled. Claims 9-20 were previously withdrawn as a result of an earlier restriction requirement.

Independent claim 1 has been amended with this Response. No new matter has been added. Accordingly, entry of this amendment is respectfully requested.

Initially, Applicants thank the examiner for withdrawing the anticipatory rejections based on Speights, the obviousness rejection based on Reinhart, and the obviousness rejection based on a combination of Speights and Reinhart.

Rejection Under 35 USC §112, Second Paragraph

The Office Action states that amended claims 1-3 and 6-8 are rejected under 35 USC 112, second paragraph, as being indefinite for reasons of record on page 4 of the Office Action. Applicants have amended independent claim 1 to now recite that the protein source is by weight of the composition. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection Under 35 U.S.C. § 102 Over Flickinger

Claims 1 and 6-8 have been rejected under 35 U.S.C. § 102 as being anticipated by Flickinger. Applicants respectfully traverse this rejection.

The Office Action points to Table 1 of Flickinger for the disclosure of 15.46% wheat and relates that to the disclosure on page 2017, left column, second full paragraph, where Flickinger discloses that the first study contained approximately 15% wheat grain, which contains an average of 1.4 mg/g of scFOS. Flickinger goes on to state that, calculated, this could contribute 0.21 mg of scFOS/g of diet, or about 0.02% dietary scFOS in addition to the supplemented levels of OF.

However, Applicants respectfully submit that the Office has incorrectly applied the Flickinger reference to the claims at hand. Independent claim 1 recites, inter alia, a composition comprising from about 0.01% to 0.19% of short chain oligofructose, by

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weight of the composition. The disclosure of Flickinger directed to by the Office Action is to scFOS, or short chain fructooligosaccharaides, not to short chain oligofructose, as is claimed in the present claims. Accordingly, Applicants submit that Flickinger fails to at least disclose a composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition. Thus, for at least this reason, Flickinger fails to disclose each and every element of the claims, and Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103 Over Flickinger

Claims 1 and 6-8 have been rejected under 35 U.S.C. § 103 as being unpatentable over Flickinger. Applicants respectfully traverse this rejection.

The Office Action points to Table 2 and page 2010, right column, of Flickinger for the disclosure of 0, 0.5, 1, or 1.5 g scFOS in 250 g of kibbled diet. Firstly, Applicants want to point out that for this experiment of Flickinger, the scFOS was administered orally by gelatin capsule. See third full paragraph, right column, page 2010. Additionally, Flickinger states that this administration orally by gelatin capsule was done in order to avoid the possibility of scFOS degradation during diet processing. Accordingly, initially it is submitted that this disclosure of Flickinger does not relate to a companion animal composition that is a dog food or a cat food with the protein source as recited in claim 1.

Next, Applicants respectfully submit that, as described above, the Office has incorrectly applied the Flickinger reference to the claims at hand. Independent claim 1 recites, inter alia, a composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition. The disclosure of Flickinger directed to by the Office Action is to scFOS, or short chain fructooligosaccharaides, not to short chain oligofructose, as is claimed in the present claims. Accordingly, Applicants submit that Flickinger fails to at least disclose a composition comprising from about 0.01% to 0.19% of short chain oligofructose, by weight of the composition. Thus, for at least this reason, Flickinger fails to disclose each and every element of the claims. The other references cited, namely Campbell and NRC, are used for evidence of inherency. Accordingly, the

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remarks with respect to Flickinger still hold, and since Flickinger fails to disclose each and every element of the claims, it cannot said to obviate the claims. Applicants respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION

This Response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,
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